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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,177	03/15/2004	Richard S. Belliveau		1469
27550	7590	11/27/2006		
WALTER J, TENCZA JR. 10 STATION PLACE, SUITE 3 METUCHEN, NJ 08840				
			EXAMINER LEE, Y MY QUACH	
			ART UNIT 2875	PAPER NUMBER

DATE MAILED: 11/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



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10/801,177

APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT	PAPER
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20061102

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Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

Note the attached communication.

Y Quach Lee
Primary Examiner
Art Unit 2875

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Applicant's arguments filed April 28, 2006 have been fully considered but they are not persuasive. Applicant stated that the pending reissue claims 13 to 82 are linking claims that satisfy the requirement as provided in MPED 809 such that linking claims are "one or more claims ... inseparable from the elected and non-elected claims and thus linking together the otherwise divisible inventions" even though they are not the "genus" type of linking claims at issue in *In re Doyle*. Applicant also stated that pending reissue claims 13 to 82 appear to qualify as "subcombination claims linking plural combinations," a separate type of linking claim expressly recognized by the MPEP 809. Applicant further stated that pending claims 13 to 82 qualify under *In re Doyle* because *In Re Doyle* applies any time that the reissue claims are not "substantially similar" to the claims corresponding to non elected subject matter and the pending reissue claims could have been pursued alongside the originally issued claims.

It should be noted that the reissue statute was not enacted for correcting the original patent because of failing to present the types of linking claims as argued by Applicant or all patent prosecution problems. According to MPEP 1402.01, a linking claim *In Re Doyle* that permitted to be filed in a reissue application, after failure to timely file a divisional application prior to issuance of original patent, is a claim that is broad enough to read on the invention elected (and patented) together with the invention not elected.

Applicant stated that the reissue pending claims 13 to 82 are hybrid claims included limitations directed to both the elected group and the non-elected groups (see 07/25/2005 response at pages 26 to 28). Upon reviewing the communication of July 25, 2005, there are no pages 26 to 28. It would appear that Applicant is referring to pages 26 to 28 of the response of May 11, 2005. In those pages, Applicant cited column 11, lines 50 to 52 of applicant's original patent to support that the invention of Fig. 3F (part of the elected first group of species) can be used with the invention of Fig. 3D (non-elected second group of species). Applicant also cited in those pages column 16, lines 15 to 24 of Applicant's original patent to support that the invention of Fig. 3D can be used on the substrate 912 which is used in Fig. 12C (non elected fourth group of species).

This is not found persuasive. It should be noted that column 11, lines 50 to 52 stated that each LED of the groups of LEDs shown in Fig. 3D are individually controllable by electronic

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circuitry which may be **similar** to that of Fig. 3F or with some other circuitry. They do not disclose that the invention of Fig. 3F can be used with the invention of Fig. 3D. It should also be noted that column 16, lines 21 to 24 stated that the substrates 812 and 912, instead of the LED patterns show, may have a different number of light sources or patterns and may incorporate embodiments like that shown in Fig. 3D. They do not disclose that the invention of Fig. 3F can be used with the invention of Fig. 12C. There were also no description to show that the LED in the discrete circuits of figure 3F and the circuit of figure 3D can be controlled by the controlled circuit 2280 of Fig. 12C.

Applicant additionally stated that even if the Examiner concludes that pending claims 13 to 82 are not linking claims and are instead directed to a "separate and distinct" invention, 37 CFR 1.176b authorizes the Examiner to issue restriction requirement so that Applicant may pursue these claims in a divisional reissue application.

It should be noted that a restriction requirement will not be issued because an election of species was made in the original patent and Applicant had acquiesced to the election of species requirement by canceling all the claims not directed to a plurality of light sources mounted on a flexible substrate with a flexible device for flexing the flexible substrate by applying pressure to the substrate to cause the substrate to deform in a first state and to not deform in a second state to cause the light emitted from the light sources concentrated in different directions in response to the requirement for election of species (09/526,499, amendment of May 23, 2001 and November 15, 2001). Appellant's "right to claim" was thereby limited to the elected invention. Besides, it appears that if the added claims 13 to 82 were presented during the prosecution of the '499 application, these claims would have been restricted out as being directed to an invention that is patentably distinct from the elected invention, and claims 13 to 82 would have been withdrawn from consideration as being directed to a non-elected invention. After foreclosing Applicant's right to claim any subject matter other than the invention of a plurality of light sources mounted on a flexible substrate with a flexible device for flexing the flexible substrate by applying pressure to the substrate to cause the substrate to deform in a first state and to not deform in a second state to cause the light emitted from the light sources concentrated in different directions by electing group I and by failing to file a divisional application, Applicant cannot now undo the

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election by contending, on the present record, that his failure to include claims to the independent and distinct inventions of the newly added claims was due to an "error."

Since reissue claims 13 to 82 are not linking claims meaning generic to the invention elected (and patented) together with the invention not elected, and are not linking claims as argued and provided in MPEP 809, consequently, there is no error present or relied upon to support the reissue application, and the patent therefore will not be reissue. Also, because the none elected claims were deliberately canceled in the original application to gain examination and allowance of elected claims 1 to 9, 25, 26 and 50, the failure to present claims 13 to 82 in the instant reissue application cannot be considered an error that supports reissuance of the patent within the meaning of 35 U.S.C. § 251, first paragraph.

Applicant is given **ONE (1) MONTH or THIRTY (30) DAYS** from the mailing date of this notice, whichever is longer, within which to response in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Y Quach Lee whose telephone number is 571-272-2373. The examiner can normally be reached on Tuesday and Thursday from 8:30 am to 4:30 pm.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the customer service 571-272-2815.

Y. Q.
November 02, 2006



Y Quach Lee
Primary Examiner
Art Unit 2875